

Goforth, Steve

HEART ATTACK

Presumption in RCW 51.32.185

If the facts support a finding that the presumption in RCW 51.32.185 applies, findings and conclusions regarding the presumption are required. ...*In re Steve Goforth*, BIA Dec., 09 16328 (2010)

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: STEVE A. GOFORTH**) **DOCKET NO. 09 16328**
2 **CLAIM NO. SC-70817**) **DECISION AND ORDER**

3 APPEARANCES:
4

5 Claimant, Steve A. Goforth, by
6 Webster, Mrak & Blumberg, per
7 Richard P. Blumberg

8 Self-Insured Employer, City of Everett, by
9 Keehn Kunkler, PLLC, per
10 Gary D. Keehn

11 Department of Labor and Industries, by
12 The Office of the Attorney General, per
13 Heather Leibowitz, Assistant

14 The employer, City of Everett, filed an appeal with the Board of Industrial Insurance Appeals
15 on June 23, 2009, from an order of the Department of Labor and Industries dated March 20, 2009.
16 In this order, the Department canceled its September 29, 2008 order and allowed the claim as an
17 occupational disease with a date of manifestation of January 6, 2008. The Department order is
18 **AFFIRMED.**

DECISION

19 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
20 review and decision. The employer filed a timely Petition for Review of a Proposed Decision and
21 Order issued on August 27, 2010, in which the industrial appeals judge affirmed the Department
22 order dated March 20, 2009.

23 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
24 no prejudicial error was committed. The rulings are affirmed.

25 While we agree with our industrial appeals judge's assessment of the evidence and
26 conclusions, we have granted review to clarify the Findings of Fact and Conclusions of Law and
27 add findings and conclusions relating to the presumption found in RCW 51.32.185. The statute
28 provides that heart problems experienced by firefighters within 72 hours of exposure to smoke are
29 presumed to be occupational diseases. The statute also provides that the presumption of coverage
30 may be rebutted by a preponderance of evidence. Once the firefighter establishes that the
31 presumption applies, the employer has the burden of proving that the claim should be denied.
32

1 The presumption applies in this case. The evidence demonstrated Mr. Goforth was
2 exposed to smoke during the course of firefighting activities and suffered heart problems within
3 72 hours of the smoke exposure. Because these facts establish that the presumption applies, the
4 employer must demonstrate that the claim should be denied by a preponderance of evidence. In
5 an attempt to rebut the presumption, the employer presented evidence of Mr. Goforth's pre-existing
6 heart condition, which was mildly symptomatic. Mr. Goforth had been experiencing mild symptoms
7 of heart failure in the two months prior to his shift in January 2008. The pre-existing heart condition
8 was not disabling, however. The employer attempted to demonstrate that the exposure did not
9 accelerate or aggravate the pre-existing heart condition. A preponderance of the evidence,
10 however, established that Mr. Goforth's condition would not have decompensated at the time it did,
11 to the extent it did, absent his firefighting activities during his shift on January 6, 2008. A
12 preponderance of the evidence demonstrated that Mr. Goforth's activities and exposures at work
13 led to a dramatic, permanent worsening of his pre-existing condition.

14 Although the employer presented evidence that the pre-existing heart condition was not
15 accelerated or aggravated by occupational exposure, in this matter the evidence was not sufficient
16 to preponderate. In other words, the employer did not successfully rebut the presumption that
17 Mr. Goforth's claim should be allowed as an occupational disease. We agree with the conclusions
18 of our industrial appeals judge. Mr. Goforth is entitled to benefits.

19 **FINDINGS OF FACT**

- 20 1. On March 20, 2008, the claimant, Steve A. Goforth, filed an Application
21 for Benefits in which he alleged he sustained an industrial injury to his
22 heart and lungs on January 6, 2008, while employed with the City of
23 Everett. On September 29, 2008, the Department issued an order in
24 which it denied the claim for the reason that the worker's condition was
25 not the result of an industrial injury and was not an occupational disease
26 as defined by RCW 51.08.140. On November 7, 2008, the claimant filed
a Protest and Request for Reconsideration of the September 29, 2008
order. On January 27, 2009, the Department issued an order in which it
placed the September 29, 2008 order in abeyance.

27 On March 20, 2009, the Department issued an order in which it
28 canceled its previous order dated September 29, 2008, and allowed the
29 claim as an occupational disease that occurred on January 6, 2008. In
30 this order, the Department also held that the self-insured employer was
31 directed to pay all medical and time-loss compensation benefits as were
32 indicated in accordance with the industrial insurance laws.

On April 23, 2009, the self-insured employer filed a Protest and Request
for Reconsideration with the Department from the order dated
March 20, 2009. On May 19, 2009, counsel for the self-insured

1 employer filed a Protest and Request for Reconsideration with the
2 Department from the order dated March 20, 2009. The Department
3 forwarded counsel for the self-insured employer's Protest and Request
4 for Reconsideration to the Board of Industrial Insurance Appeals on
5 June 23, 2009 as a direct appeal.

6 On July 15, 2009, the Board issued an Order Granting Appeal under
7 Docket No. 09 16328, and agreed to hear the appeal.

- 8 2. Mr. Goforth worked for the City of Everett as a paramedic/firefighter. On
9 January 6, 2008, Mr. Goforth responded to a fire call, engaged in
10 firefighting activities, and was exposed to smoke.
- 11 3. On January 7, 2008, Mr. Goforth presented at a walk-in clinic
12 complaining of a worsening cough and blood-tinged sputum. He was
13 diagnosed with congestive heart failure. Mr. Goforth's heart condition
14 and the related symptoms appeared within 72 hours of a shift during
15 which he was exposed to smoke.
- 16 4. On November 2, 2008, Mr. Goforth underwent a heart transplant.
- 17 5. Mr. Goforth's suffered from a pre-existing dilated cardiomyopathy that
18 was stable prior to his shift on January 6, 2008.
- 19 6. As a natural and proximate result of the distinctive conditions of his
20 employment as a paramedic/firefighter on January 6, 2008,
21 Mr. Goforth's pre-existing non-work-related dilated cardiomyopathy was
22 accelerated or aggravated.
- 23 7. The acceleration or aggravation of Mr. Goforth's pre-existing
24 non-work-related dilated cardiomyopathy caused the need for medical
25 treatment in the form of a heart transplant.

26 **CONCLUSIONS OF LAW**

- 27 1. The Board of Industrial Insurance Appeals has jurisdiction over the
28 parties to and the subject matter of this appeal.
- 29 2. The acceleration or aggravation of the pre-existing non-work-related
30 dilated cardiomyopathy is compensable as an occupational disease
31 under RCW 51.08.140.
- 32 3. The presumption identified in RCW 51.32.185 applies to Mr. Goforth's
case because his pre-existing heart condition became disabling within
72 hours of his exposure to smoke.
4. The heart transplant, which took place on November 2, 2008,
constituted necessary and proper treatment as contemplated by
RCW 51.36.010.

1 5. The order of the Department of Labor and Industries dated
2 March 20, 2009, in which it allowed the claim as an occupational
3 disease is correct and is **AFFIRMED**.

4 DATED: December 3, 2010.

5 BOARD OF INDUSTRIAL INSURANCE APPEALS

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7 /s/ _____
8 DAVID E. THREEDY Chairperson

9
10 /s/ _____
11 FRANK E. FENNERTY, JR. Member

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